

Message Text

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E O 11652: NA

TAGS: EFIN, RP, US

SUBJ: DRAFT TAX CONVENTION

REF: A. STATE 219119 B. STATE 224434

1. EMBOFFS CALLED ON UNDERSECRETARY OF FINANCE PIO DE RODA, CHAIRMAN OF PHILIPPINE TAX PANEL, CONCERNING PROPOSED CHANGE TO ARTICLE 9 OF DRAFT TAX CONVENTION. ALSO PRESENT WAS TOMAS TOLEDO, MEMBER OF THE PHILIPPINE PANEL.

2. EMBOFFS INFORMED PIO DE RODA THAT THE U.S. AIRLINE INDUSTRY OBJECTS TO ARTICLE 9 AND COULD BE EXPECTED TO OPPOSE RATIFICATION BY THE SENATE IF THE TREATY IS SUBMITTED IN ITS PRESENT FORM. WE EXPLAINED THAT THE PREFERRED SOLUTION OF USG IS TO PROVIDE FOR MUTUAL EXEMPTION, AND ASKED FOR THEIR CONSIDERATION OF CHANGES AS PROPOSED IN REFTEL A. AFTER POLITE SHOW OF ENTERTAINING THE IDEA, PIO DE RODA AND TOLEDO STATED THAT THERE WAS "NO CHANCE" THAT GOP COULD ACCEPT MUTUAL EXEMPTION, PRIMARILY BECAUSE OF MFN FEATURE IN OTHER TREATIES WHICH THEY HAVE SIGNED.

3. THEY WERE RECEPTIVE, HOWEVER, TO THE SUGGESTION THAT AIRLINES COULD BE EXCLUDED. WHILE THEY WERE SOMEWHAT PUZZLED THAT U.S. CARRIERS WOULD PREFER THE TWO AND A HALF PERCENT RATE TO ONE AND A HALF, THEY SAID THAT THEY WOULD PRESENT THE PROPOSAL TO SECRETARY OF FINANCE VIRATA.

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HOWEVER, PIO DE RODA WISHES TO HAVE FURTHER CLARIFICATION

ON THE PRECISE INTENT OF THE PROPOSED CHANGE. CONCERNING THE NEW PARAGRAPH 2, AS PROPOSED REFTEL B, HE ASKED WHY IT WAS STATED IN THE NEGATIVE, AND WONDERED IF THIS FORM WOULD LEAVE OPEN THE POSSIBILITY OF RETALIATION OR IMPOSITION OF "COUNTERVAILING TAXES" AT SOME FUTURE TIME.

4. PIO DE RODA STATED THAT HE PREFERRED TWO OTHER OPTIONS, WHICH HE INTENDED TO PRESENT TO VIRATA AS FOLLOWS (REFER TO REVISION PROPOSED REFTEL B): (A) STATE PARAGRAPH 2 POSITIVELY; THAT IS, PROVIDE EXPLICITLY THAT DOMESTIC LAWS SHALL PREVAIL. (B) REMOVE AIR TRANSPORT FROM ANY TREATMENT IN THE CONVENTION BY STRIKING "AND AIR" FROM THE TITLE, STRIKING OUT PARAGRAPH 2 ENTIRELY, AND RENUMBERING PARAGRAPH 3 PARAGRAPH 2. HE ASKED IF THESE OPTIONS RESULTED IN CHANGES EQUIVALENT TO THAT PROPOSED BY THE U.S. SIDE. EMBOFFS GAVE AS THEIR OPINION THAT THEY DID -- THAT THE INTENTION WAS TO PRIVIDE FOR TAXATION OF AIRLINES ACCORDING TO DOMESTIC LAW -- BUT PROMISED TO CONSULT WASHINGTON ON THIS POINT. ASSUMING EMBASSY IS CORRECT, DOES U.S. SIDE HAVE PREFERENCE BETWEEN OPTIONS A AND B ABOVE? OPTION B WOULD SEEM TO ALLOW FOR SOMEWHAT MORE FLEXIBILITY IN FUTURE HANDLING OF SUBJECT. IN THIS RESPECT, AIRLINE INDUSTRY -- PARTICULARLY NORTHWEST AND FLYING TIGER AS OPPOSED TO PANAM -- SHOULD BE CLEARLY AWARE THAT THE PROSPECTS FOR MUTUAL EXEMPTION IN THE FUTURE ARE "OUT OF THE QUESTION" IN THE WORDS OF THE GOP OFFICIALS.

5. PIO DE RODA THOUGHT IT WAS STILL POSSIBLE TO OBTAIN AGREEMENT IN TIME FOR SIGNING DURING THE IMF/IBRD MEETINGS. WITH RESPECT TO MECHANICS, HE SAID THAT SOME COUNTRIES PREFER TO PREPARE THE TREATY ON SPECIAL PAPER; HE EXPCETED THE UNITED STATES WOULD WANT TO DO SO AND WAS NOT ADVERSE TO THE UNITED STATES ALSO PREPARING THE PHILIPPINE COPY. REQUEST DEPARTMENT COMMENTS ON THIS MATTER.

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